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Supreme Court of the United States

OCTOBER TERM, 1958

No. .....

PERFECT BRASSIERE CO., INC.,

Petitioner,

—v.—

PERFECTFORM CORPORATION,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Supreme Court of the United States

OCTOBER TERM, 1958

No. 422

PERFECT BRASSIERE CO., INC.,

Petitioner,

—v.—

PERFECTFORM CORPORATION,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

If as respondent asserts the Lanham Act has nothing to do with the issues here presented because, it now says, this case involves simple common law unfair competition, then the case lacks federal jurisdiction. Lacking federal jurisdiction it should be remanded on the respondent's concession with instructions to dismiss for want of federal jurisdiction.

The Hobson's Choice which respondent faces in this Court is either to admit that the case is one under the Lanham Act and was administered below in derogation of federal law and in conflict with other circuits; or, that this is merely a common law case of unfair competition lacking grounds for federal jurisdiction.

The respondent's brief advisedly fails to advert to the facts that its mark has no secondary meaning in the night-gown and slip business, the respondent's business, that its mark has no secondary meaning in the brassiere business,

the business of the petitioner, and that the respondent and petitioner are not in competition and do not sell competitive products.

There is no finding in the record of a secondary meaning of respondent's mark in any business.

There is no finding or claim of a palming off of petitioner's goods as those of the respondent.

There is no finding or claim that the goods of petitioner are either closely or obviously related to the goods of the respondent. There is total dissimilarity and no relationship.

There is no finding or claim that petitioner competes with respondent.

The respondent has side-stepped and avoided the legal issues raised by the petition substituting for reasoned argument in response thereto an impassioned irrelevancy.

Dated: New York, December 8, 1958.

Respectfully submitted,

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